XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

Cr.A.No.49/2000
Cr.A.No. 2537/2000

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

CRIMINAL APPEAL NO. 49/2000

APPELLANT Sumariabai widow of Late Ishwardin, aged 55 years, R/o. Pasauri, P.S. Kelhari, Distt. Koria (C.G.)

Versus

RESPONDENT State of Chhattisgarh, through Police Station, Kelhari, Distt. Koria (C.G.)

CRIMINAL APPEAL NO. 2537/2000

APPELLANT Ramnaresh, son of Late Ishwardin, aged 35 years, R/o. Pasauri, P.S. Kelhari, Distt. Koria (C.G.)

Versus

RESPONDENT State of Chhattisgarh, through Police Station, Kelhari, Distt. Koria (C.G.)

D.B. : Hon'ble Shri L.C. Bhadoo and Hon'ble Shri Dhirendra Mishra, JJ.

3-4-2007

Shri Rajesh Jain, Advocate for the appellants.

Shri Akhil Mishra, Panel Lawyer, for the respondent/State.

Arguments heard.

Oral judgment dictated on *Dais*.

ORAL JUDGMENT

Per L.C.Bhadoo, J. :

Since Criminal Appeal No. 49/2000 and Criminal Appeal No. 2537/2000 are arising out of the same judgment and same crime number, therefore they are being disposed of by this common judgment.

These appeals are directed against the judgment of conviction and order of sentence dated 30-8-2000 passed by Additional Sessions Judge, Manendragarh in

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

S.T. No. 117/2000, whereby the learned Additional Sessions Judge after holding accused/appellants guilty for commission of offence under Section 302 of I.P.C., sentenced each of them to undergo imprisonment for life and to pay a fine of Rs. 200/-, in default of payment of fine, to further undergo 3 months' R.I. Accused Ramnaresh has also been convicted for offence under Section 201 of I.P.C. and sentenced to undergo 7 years R.I. It is further directed that both the sentences shall run concurrently.

Prosecution case, in brief, is that accused Ramnaresh being step-son of Sumariabai, he used to reside with his father iswardin, step-brother Jagat Bahadur and step-mother Sumariabai. Deceased Ishwardin was doubting fidelity of his wife that Ramnaresh and Somariabai are having illicit relations. In the night of 26-10-1999, Ishwardin (since deceased) was sitting with one Sukhnandan till 8.00 p.m. and thereafter he went to his house. He after taking dinner went for sleep. In the same house, accused Ramnaresh and his step-brother Jagat Bahadur also went for sleep after taking their dinner. In midnight, Ishwardin started abusing Ramnaresh, on which, Ramnaresh and Somariabai attacked deceased Ishwardin with a wooden *Peedha*, as a result of which he became unconscious. Thereafter Ramnesh pressed neck of Ishwardin, as a result of which he died. On account of pressing of neck, he passed stool and vomiting also, which was cleaned by Somariabai in the morning. Ramnaresh lodged report in the Police Station, Kelhari that his father has died on account of vomiting and dysentery, on which Investigating Officer left for scene of occurrence, prepared inquest Ex. P-1 on the body of Ishwardin. During police custody, Ramnaresh gave memorandum Ex. P-2, pursuant to that, wooden *Peetha* was seized under Ex. P-3. Statement of Jagat Bahadur was got recorded before the Magistrate under Section 164 of Cr.P.C. Site plan Ex. P-6 was prepared. First Information Report Ex. P-8 was registered.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Body of Ishwardin was sent for post mortem examination to Government Hospital, Kelhari under Ex. P-9 where Dr. S.R. Paraste (P.W. 8) conducted post mortem. He gave report Ex. P-11 and opined that cause of death was asphyxia due to strangulation and it was homicidal in nature. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Manendragarh who in turn committed the case to the Sessions Judge from where learned Additional Sessions Judge, Manendragarh received the case on transfer for trial.

Prosecution in order to establish the charge against the accused persons, examined 8 witnesses at the trial. Statement of accused-appellants were recorded under Section 313 of Cr.P.C. in which they denied the material appearing against them in prosecution evidence. They stated that they are innocent and have been falsely implicated in the crime as Jagat Bahadur wants to grab the property. Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused-appellants as aforementioned.

We have heard Shri Jain on behalf of the accused-appellants and Shri Mishra on behalf of the State.

Shri Jain has not disputed homicidal death of Ishwardin. Moreover, Dr. S.R. Paraste (P.W. 8) has stated that he conducted post mortem on the body of Ishwardin, there were bruises on the neck, tongue was between teeth, he opined that cause of death was asphyxia due to strangulation, death was homicidal in nature. Therefore, it is established that death of Ishwardin was homicidal in nature.

As far as involvement of accused-appellants in crime in question is concerned, star witness in this case is P.W. 5 Jagat Bahadur who is real son of accused Sumariabai. Accused Ramnaresh is step-son of Sumariabai. P.W. 5 Jagat

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Bahadur has turned hostile and has been cross-examined by the Additional Public Prosecutor. In para 2 of his evidence he has stated that his mother and step-brother accused persons made extra judicial confession before him that they have committed murder of his father and they threatened him that if he will disclose this fact to anybody else, then they will commit his murder also. But this witness is not worth reliance for the reason that statement of this witness was recorded under Section 164 of Cr.P.C. in which he never disclosed this fact that accused persons made extra judicial confession before him regarding causing death of his father Ishwardin. As far as question of witnessing the crime by him is concerned, on cross-examination by Additional Public Prosecutor, he stated that he gave statement before Magistrate Ex. P-4 that he woke up on hearing cries of his father and saw that his mother and step-brother Ramnaresh were assaulting his father with *Peedha*, his brother Ramnaresh pressed neck of his father, he further stated that he forgot to tell this thing therefore, he did not tell this before the Court. In para 8, he has stated that in the night, he woke up and in the morning he saw vomit and stool of his father. In the night, he had no talk with accused persons. In the fateful night, there was electric failure, therefore, in the night he could not see injuries on the body of his father, in the morning at about 5 to 6 a.m., he woke up, by that time his father was already dead. In cross-examination, he has stated that he did not disclose every fact before the police, but disclosed before the Magistrate. In para 13 of evidence, he has stated that there are 4 rooms in their house, in one room, he went for sleep, in one room, his father went for sleep and in one room the accused persons went for sleep. He has further stated that when his mother called him that his father is vomiting and has passed stool, he went to that room and saw that vomiting and stool were lying there. In para 14, he has stated that he did not disclose the fact of committing murder of father to his

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

maternal uncle and he did not know the reason of not disclosing. After death of his father, he went to maternal uncle to call him. There he and accused persons told them that his father Ishwardin has died on account of dysentery and vomiting. He has further stated that because he was frightened, therefore he did not disclose this fact to anybody. He is the only witness and evidence of this witness is wavering. At one place he has stated in his statement under Section 164 of Cr.P.C. that he saw the accused persons attacking his father and Ramnaresh pressed neck of his father whereas before the Court he has not categorically stated that in fact he saw Ramnaresh pressing neck of his father and assault being made by Ramnaresh and his mother Sumariabai. In para 8, he has stated that in the morning he saw stool and vomiting of his father, in the night he had no talk with accused persons. Therefore, his evidence does not inspire full confidence of the Court and there is no other evidence to corroborate the evidence of this witness. Therefore, it is not safe to place full reliance on the evidence of this witness in order to hold guilty the accused-appellants Ramnaresh and Sumariabai. The fact remains that Ishwardin died on account of strangulation and there were injuries on his body also and that has not been explained by the accused persons. Accused persons were not the only persons in the house. P.W. 5 Jagat Bahadur was also residing in the same house and the house was not in the exclusive possession of the accused persons, therefore, it is difficult to raise an inference that the accused persons have failed to explain how deceased sustained injuries. They are the persons responsible to cause death of Ishwardin.

For the foregoing reasons, there is no clear cogent and legal evidence available on record based on which the accused persons can be held to have committed murder of Ishwardin. Therefore, they are entitled for benefit of doubt.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	In the result, appeals succeed and the same are allowed. Conviction and sentence imposed upon accused appellants under Section 302 as well as Section 201 of I.P.C. are set aside. They are acquitted of the above charges. They be set at liberty forthwith if not required in any other case. **Sd/-** **L.C.BHADOO** **Judge**	**Sd/-** **DHIRENDRA MISHRA** **Judge**

P.T.O.